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United States
Circuit Court of Appeals
For the Ninth Circuit.

EDWARD WHITE, as Commissioner of Immigration
at the Port of San Francisco,
Appellant,

vs.

TOM YUEN,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

Filed

MAY 6 - 1916

F. D. Monckton,
Clerk,



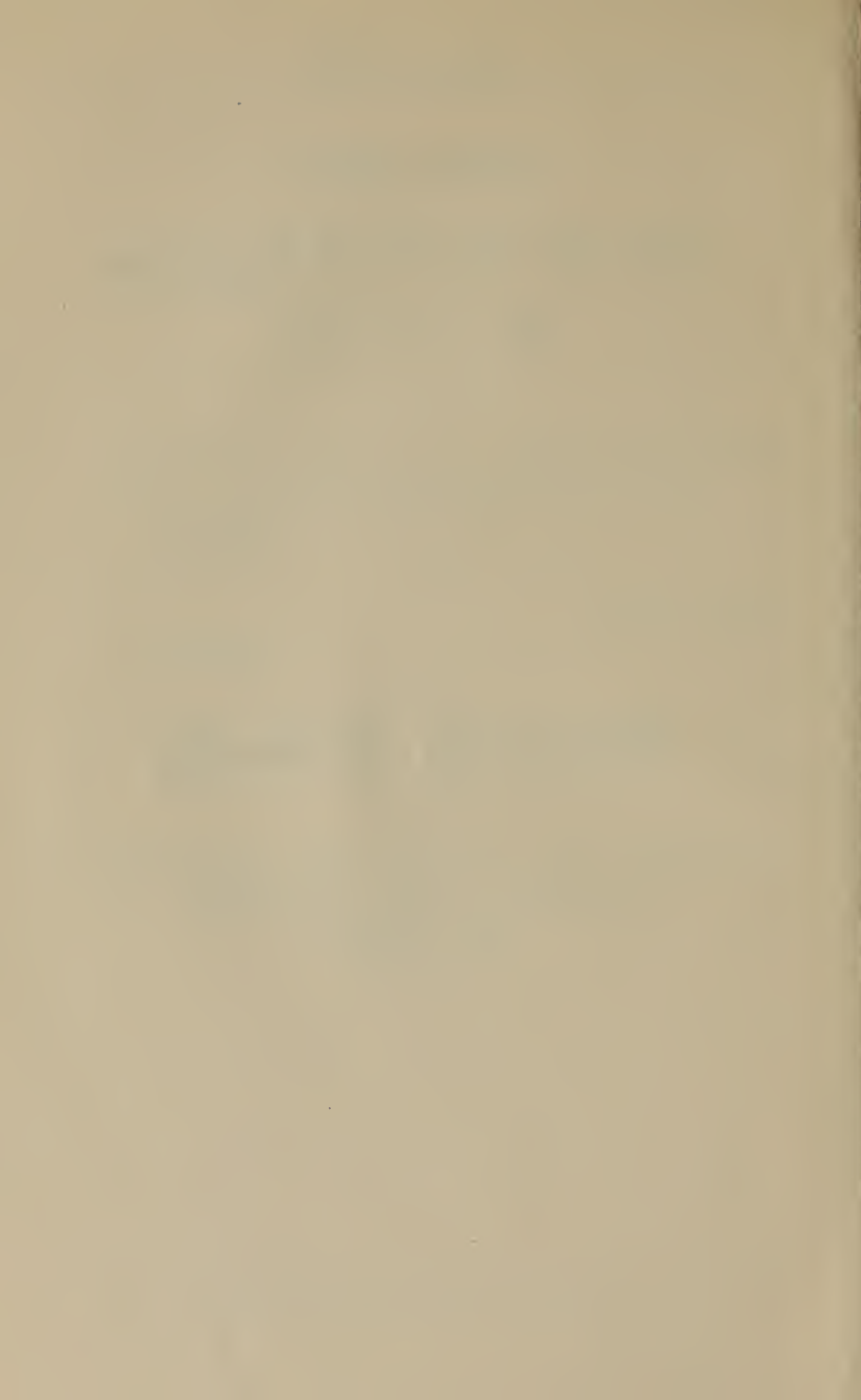
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, for the
Northern District of California.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

[Names and Addresses of Attorneys of Record.]

ATTORNEYS FOR,

For Petitioner and Appellee:

FRANK STEWART, JOHN L. McNAB and
TIMOTHY HEALY, San Francisco, Calif.

For Respondent and Appellant:

JOHN W. PRESTON, U. S. Attorney, and
CASPER A. ORNBAUM, Asst. U. S. Attorney.

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of the Application for a Writ of
Habeas Corpus in Behalf of TOM YUEN.

Praeceptum [for Transcript of Record].

To the Clerk of said Court:

Please prepare for use as transcript on the Appeal
in the above entitled and numbered case, the following:

1. Petition for Writ of Habeas Corpus, consisting
of the first five pages thereof, thus omitting
exhibits "A" and "B."
2. Order to Show Cause.

3. Marshal's Return of Service of the Order to Show Cause.
4. Demurrer to Petition.
5. Opinion and Order Overruling Demurrer and Ordering Writ to Issue.
6. Writ of Habeas Corpus and Marshal's Return of Service thereof.
7. Return to Petition and Stipulation set forth on last page of said Return.
8. Order Discharging Petitioner.
9. Petition for Appeal.
10. Assignment of Petitioners.
11. Order Allowing Appeal.
12. Notice of Appeal.
13. Stipulation of Attorneys and Order of the Court Transferring the Record of the Bureau of Immigration known as respondent's exhibit "A" to the U. S. Circuit Court of Appeals for the 9th Circuit, to be considered in its original form and without being transcribed, as a part of the Government's Return to said petition for Writ of Habeas Corpus and Order to Show Cause.

Dated this 22d day of March, A. D. 1916.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUM,

Asst. U. S. Attorney.

Receipt of a copy of the within praecipe is hereby acknowledged this 22d day of March, 1916.

JOHN L. McNAB,
TIMOTHY HEALY,
Attorneys for Appellee.

[Endorsed]: Filed Mar. 23. 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

In the Matter of the Application for a Writ of
Habeas Corpus in Behalf of TOM YUEN.

Affidavit and Petition (for Writ of Habeas Corpus).
To the Honorable M. T. DOOLING, Judge of said
Court:

Your petitioner, Tom Yuen, being duly sworn, on
oath deposes and says:

That he is unlawfully imprisoned and restrained
of his liberty by Edward White, Commissioner of
Immigration at the city and county of San Francisco,
in said District, under and by virtue of a warrant
of deportation heretofore issued by the Secretary of
Labor of the United States, a copy of which said
warrant is attached hereto, hereby referred to, made
a part hereof and marked exhibit "A."

That said imprisonment and restraining of his
liberty of said petitioner, Tom Yuen, is unlawful in
this:

*Page-number appearing at foot of page of original certified Record.

1. That the said Secretary of Labor of the United States had no jurisdiction over the person of your petitioner and no jurisdiction or authority to issue said warrant.

2. That said Secretary of Labor exceeded his jurisdiction and authority and all jurisdiction and authority conferred upon him by law in and by issuing said warrant of deportation. [2]

3. That your petitioner was not given a fair and impartial trial and hearing by the Immigration Officers of the United States precedent to the issuing of said warrant of deportation and upon which said warrant is purported to be based; all of which will more fully appear by the attached record of the testimony and proceedings given and adduced at said hearing, which said record is hereby referred to, made a part hereof and marked exhibit "B."

That said Secretary of Labor did not have jurisdiction of the person of your petitioner or of this case in this: That there was no evidence that your petitioner entered the United States within three years next preceding the date of his arrest by the Immigration Officers, and that your petitioner is, and at all times herein mentioned and referred to, was a Chinese laborer, lawfully domiciled and residing in the United States, he having registered as such Chinese laborer at New York, New York, on March 2, 1894, and at all times thereafter being the legal owner and actual holder of Chinese Laborer's Certificate of Residence No. 28,667, and on said date of his arrest he had said Certificate of Residence in his possession in the city of Los Angeles, California,

when same was taken from him by the United States Immigration Officials, and that said Certificate is now wrongfully withheld from your petitioner by said officials.

That said Secretary of Labor had no jurisdiction to issue the said warrant (exhibit "A") directing that your petitioner be deported to China, as there is no evidence that your petitioner came from China into the United States, at any time during the past thirty-five years. [3]

That said Secretary of Labor exceeded the jurisdiction and authority conferred upon him by law in this:

That said Secretary of Labor had not, at any time, any jurisdiction or authority to issue said warrant for the deportation of your petitioner, he being at the time of said issuance of said warrant of deportation, and at all other times herein mentioned and referred to, a Chinese laborer, regularly and lawfully holding a Chinese Laborer's Certificate of Residence, and lawfully being and residing in the United States by virtue of said Certificate of Residence.

That said trial and hearing, and proceedings for the deportation of your petitioner, were unfair in this:

That the testimony and evidence adduced at said hearing which is contained in exhibit "B" hereto attached, was and is insufficient and inadequate to permit or justify said Secretary of Labor in issuing said warrant of deportation, or justify the deportation of your petitioner; and that the conclusions of law on the part of said Secretary of Labor and other

Immigration Officials from the facts adduced at said hearing are erroneous and not sustained by said testimony and evidence in this, that said testimony and evidence show that your petitioner is, and at all times mentioned herein was, a Chinese laborer lawfully domiciled and residing in the United States, holding and owning a genuine Chinese Laborer's Certificate of Residence; and that there is no testimony that your petitioner entered the United States within three years prior to his arrest; and there is no testimony that he entered the United States without inspection, as alleged in said warrant of deportation.

That said hearing was further unfair and illegal in this: That certain of said testimony set forth in exhibit "B" hereto attached, was not given in the presence or hearing of [4] your petitioner or his counsel.

That said hearing was also unfair in this: That testimony was received against your petitioner in the nature of unsworn statements by persons in Mexico, prior to the arrest and hearing of petitioner, whom your petitioner had no opportunity to meet, see or cross-examine; and there was no evidence adduced showing that your petitioner is the identical person referred to in said unverified statements.

Your petitioner further states that said warrant of deportation, exhibit "A" attached hereto, is void in law and absolutely invalid in that it directs the deportation of your petitioner to China, contrary to the law and the evidence affecting this matter; and for the further reason that it does not appear therein

and cannot be ascertained therefrom, on what grounds or for what reason your petitioner is alleged to be unlawfully in the United States.

That your petitioner is lawfully within the United States, and is the owner of and entitled to the possession of said Certificate of Residence.

That a copy of said warrant of arrest, upon which the said proceedings are based, and were conducted as aforesaid, is hereunto attached, hereby referred to, made a part hereof and marked exhibit "C."

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus be issued, directed to said Edward White, Commissioner of Immigration at San Francisco, California, in order that the cause of the detention of said petitioner may be inquired into and for such further order of Court as may be found proper.

FRANK STEWART,

JOHN L. McNAB,

TIMOTHY HEALY,

Attorneys for Petitioner, [5]

State of California

City and County of San Francisco,

Northern District of California,—ss.

Tom Yuen, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing Petition that he has read the said Petition, or the same has been read to him, and knows the contents thereof and that the same is true of his own knowledge and belief, except as to the matters which are

therein stated on his information and belief, and as to those matters he believes it to be true.

TOM (Chinese Characters) YUEN,

Subscribed and sworn to, before me, this 23 day of November 1915.

[Seal]

E. L. KIMMEL,

Notary Public in and for the City and County of San Francisco, State of California.

(Exhibits "A" and "B," which were here attached to the Original Petition, have been omitted from this Copy pursuant to Praecipe.)

[Endorsed]: Filed Nov. 23, 1915. W. B. Maling, Clerk, By C. W. Calbreath, Deputy Clerk. [6]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. (15,933.)

In the Matter of the Application for a Writ of Habeas Corpus in Behalf of TOM YUEN.

Order to Show Cause.

Upon consideration of the petition filed in the above-entitled cause, it is ordered that the respondent, the Commissioner of Immigration at the Port of San Francisco, show cause in this court at the courtroom thereof in the city and county of San Francisco, at 10 o'clock A. M., on Saturday, the 27 day of November, 1915, why the writ of habeas corpus should not issue as prayed for by the petitioner herein.

Let a copy of this order be served forthwith upon said respondent and upon the United States Attorney for this District and it is

FURTHER ORDERED that deportation of said petitioner be and the same is hereby stayed until the further order of this Court, and it is ——

Dated November 23, 1915.

M. T. DOOLING,
Judge of the District Court.

[Endorsed]: Filed Nov. 23, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [7]

(Marshal's) Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Commissioner of Immigration at the Port of San Francisco by handing to and leaving a true and correct copy thereof with Edward White, Commissioner of Immigration personally at San Francisco, in said District, on the 23d day of November, A. D. 1915.

J. B. HOLOHAN,
U. S. Marshal.
By Lawrdence J. Conlon,
Deputy. [8]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of the Application for a Writ of
Habeas Corpus in Behalf of TOM YUEN.

Demurrer to Petition for Writ of Habeas Corpus.

Now comes the respondent, Edward White, Commissioner of Immigration at the Port of San Francisco, in the State and Northern District of California, and demurs to the petition for a writ of Habeas Corpus in the above-entitled cause and for grounds of demurrer alleges.

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon;

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, Respondent prays that the writ of habeas corpus be denied.

JNO. W. PRESTON,

U. S. Attorney.

CASPER A. ORNBAUM,

Asst. U. S. Attorney,

Attorneys for Respondent.

[Endorsed]: Filed Nov. 27, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [9]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,933.

In the Matter of TOM YUEN on Habeas Corpus.

**(Opinion and Order Overruling Demurrer, and
Ordering Writ to Issue.)**

JOHN L. McNAB, Esq., and TIMOTHY
HEALY, Esq., Attorneys for Petitioner.

JOHN W. PRESTON, Esq., United States
Attorney and CASPER A. ORNBAUM,
Esq., Assistant United States Attorney,
Attorneys for Respondent.

**ON DEMURRER TO PETITION FOR A WRIT
OF HABEAS CORPUS.**

Petitioner is a Chinese laborer who has been in this country for many years. He was registered in New York on March 2d, 1894, and at that time received a Chinese laborer's certificate of residence which he had in his possession at the time of the hearing which led to the order of deportation that he is contesting in this proceeding. He has had no hearing before a Commissioner or Court. The proceedings leading to the order for his deportation were had before an Immigration Inspector, on the theory that sometime in December, 1914, and January, 1915, he was in Juarez, Mexico, and that there-

fore he must have entered this country within three years. To establish that fact the statement of one Acosta is relied upon. Acosta who is a police officer in Juarez, Mexico, in an *ex parte* statement before an Inspector in [10] El Paso, declared that he recognized a photograph shown him as that of a Chinese whom he had seen in Juarez in the latter part of December, 1914, and the early part of January, 1915. The photograph shown him is a photograph of petitioner. Unless petitioner has entered the United States within three years of the date of the hearing he may not be deported except after a hearing before a Commissioner, with the right of appeal to the Court. I have had occasion to hold before this, that the fact which gives jurisdiction to the Immigration Officers to hear and determine these matters, that his entry into the United States within three years, cannot be established by *ex parte* statements of witnesses in Mexico, who base their statements upon photographs, and are never confronted by the alien sought to be deported. In the absence of fair proof of such entry within three years the only tribunals that can order the deportation of a Chinese laborer are the Commissioners and the Courts. I think the right of a laborer who has been long in this country to remain here is too important a right to be taken from him upon the *ex parte* statement of a resident of a foreign country who is never produced before him.

The demurrer to the petition will be overruled and

the writ will issue returnable December 18th, 1915,
at 10 o'clock A. M.

December 13, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Dec. 13, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [11]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

Writ of Habeas Corpus.

To the President of the United States of America,
to the Commissioner of Immigration, Port of
San Francisco, Calif., Angel Island, Calif.,
Greeting:

YOU ARE HEREBY COMMANDED that you
have the body of the said person by you imprisoned
and detained, as it is said, together with the time
and cause of such imprisonment and detention, by
whatsoever name the said person shall be called or
charged, before the Honorable M. T. Dooling, Judge
of the District Court of the United States, for the
Northern District of California, at the courtroom of
said court, in the city and county of San Francisco,
California, on the 18th day of December, A. D. 1915,
at 10 o'clock A. M., to do and receive what shall then
and there be considered in the premises.

AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS, the Honorable M. T. DOOLING, Judge of the Said District Court, and the Seal thereof at San Francisco, in said District, on the 13th day of December, A. D. 1915.

[Seal]

WALER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [12]

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Writ of Habeas Corpus on the therein named Commissioner of Immigration at Angel Island, by handing to and leaving a true and correct copy thereof with Edward White, Commissioner of Immigration at Angel Island, personally, at San Francisco, in said District, on the 14th day of December, A. D. 1915.

J. B. HOLOHAN,
U. S. Marshal.

By Lawrence J. Conlon,
Officer Deputy.

[Endorsed]: Filed Dec. 15, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [13]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 15,933.

In the Matter of the Application for a Writ of Habeas Corpus in Behalf of TOM YUEN.

Return to Order to Show Cause.

Now comes Edward White, Commissioner of Immigration at the Port of San Francisco, by Charles D. Mayer, Immigrant Inspector, and in return to the order to show cause issued by the said Court on the petition of Tom Yuen for a Writ of Habeas Corpus, admits, denies and alleges as follows:

ADMITS that the said Tom Yuen is imprisoned and restrained of his liberty by said Edward White, Commissioner of Immigration at the Port of San Francisco, under and by virtue of a warrant of deportation heretofore issued by the Secretary of Labor of the United States; DENIES that said imprisonment and restraint, or imprisonment or restraint of the said Tom Yuen is unlawful; DENIES that the said Secretary of Labor had no jurisdiction over the person of petitioner, Tom Yuen, and further DENIES that he had no jurisdiction or authority to issue said warrant; DENIES that the said Secretary of Labor exceeded his jurisdiction and authority, or jurisdiction or authority conferred upon him by law in and by, or in or by issuing said warrant of deportation, or at all;

DENIES that petitioner was not given a fair and impartial trial and hearing, or trial or hearing, by the Immigration officers of the United States, precedent to the issuing of said warrant of deportation; DENIES that the said Secretary of Labor did not have jurisdiction over the person of said petitioner, or of this case, [14]

DENIES that there was no evidence that said petitioner entered the United States within three years next preceding the date of his arrest by the Immigration Officers and in this connection respondent alleges that the evidence taken and had in the above-entitled matter states that the said petitioner entered the United States from Mexico within three years from the date of his arrest and hearing in said matter.

ADMITS that your petitioner is and was at all times herein mentioned and referred to a Chinese laborer, but DENIES that he is lawfully domiciled and residing, or domiciled or residing in the United States; ADMITS that said petitioner registered as a Chinese laborer at New York on March 2, 1894, but DENIES that at all times thereafter said petitioner was the legal owner and actual holder of Chinese Laborer's Certificate of Residence, No. 28,667, and in this connection respondent alleges that at some time prior to his arrest by the said Immigration Officers, on or about the 3d day of August, 1915, he left the United States and entered Mexico without securing a Chinese Laborer's Return Certificate, under the provisions of the Treaty, Laws, Rules and Regulations Governing the Admis-

sion of Chinese into the United States; that by reason of the said petitioner leaving the United States, respondent further alleges that petitioner ceased to be the legal owner and holder, or legal owner or holder of the said Chinese Laborer's Certificate of Residence No. 28,667, or the legal owner or holder of any other Chinese Certificate of Residence,

DENIES that the said Secretary of Labor had no jurisdiction to issue said warrant, as set forth in said Petitioner's Exhibit "A," directing the said petitioner to be deported to China. [15]

DENIES that the testimony and evidence, or the testimony or evidence adduced at the said hearing, which is contained in said Petitioner's Exhibit "B" was and is, or was or is insufficient and inadequate, or insufficient or inadequate to permit or justify said Secretary of Labor in issuing said warrant of deportation, or justified the deportation of said petitioner,

DENIES that the conclusions of law on the part of the said Secretary of Labor and other Immigration Officials, or the Secretary of Labor, or other Immigration Officials from the facts adduced at said hearing or otherwise, are erroneous and not sustained by said testimony and evidence, or said testimony or evidence,

DENIES that said testimony and evidence, or said testimony or evidence show that petitioner is and at all times mentioned in said petition was a Chinese laborer lawfully domiciled and residing, or lawfully domiciled or residing in the United States, holding and owning a genuine Chinese Laborer's

Certificate of Residence.

DENIES that there is no testimony that said petitioner entered the United States without inspection, as alleged in said warrant of deportation, and in this connection respondent alleges that said petitioner did enter the United States from Mexico without inspection within three years prior to his arrest.

DENIES that said hearing was unfair and illegal, or unfair or illegal, because of certain, or any, of said testimony set forth in said Petitioner's Exhibit "B" was not given in the presence or hearing of petitioner or his counsel. [16]

DENIES that said warrant of deportation, set forth in exhibit "A" by petitioner is void in law and absolutely invalid or void, or invalid, in that it directs the deportation of said petitioner to China, or otherwise;

DENIES that said warrant of deportation is void or invalid for the reason that it does not appear therein and cannot be ascertained, or that it does not appear therein or cannot be ascertained therefrom on what grounds or for what reasons said petitioner is alleged to be unlawfully in the United States, and in this connection respondent alleges that the grounds and the reasons for petitioner being unlawfully in the United States are set forth in the said warrant of deportation, as follows: That said petitioner entered the United States in violation of section 7, Chinese Exclusion Act of September 13, 1888, being a Chinese laborer who failed to produce to the proper officer the Return Certificate required by said section.

DENIES that petitioner is lawfully within the United States and is the owner of, and entitled to the possession of said Certificate of Residence, or is lawfully within the United States, or is the owner of, or entitled to the possession of said Certificate of Residence.

As a further, separate and distinct answer and defense to the petition on file herein, respondent alleges:

That since the arrest of said petitioner, as set forth in the answer hereinabove referred to, certain hearings have been conducted in behalf of said petitioner, and testimony and other evidence has been taken concerning the right of said petitioner to be and remain in the United States; that said hearings were conducted and the testimony and other evidence taken by the said Immigration Officials acting for and on behalf of the Government of the United States, and that all of the said evidence and other testimony given and taken at said hearing was and is recorded by the said Immigration Officials in a record known as the Immigration [17] Record in the case of Tom Yuen; that said testimony and other evidence, and all of the exhibits that were considered with the said record and the said record are incorporated into and made a part of this answer and are on file herewith.

WHEREFORE, respondent prays that said petition for writ of habeas corpus be denied and the order to show cause be discharged and that said alien be remanded to the custody of the respondent for deportation, as provided for in said warrant of

deportation heretofore issued by said Secretary of Labor of the United States, and for such other and further relief as to this Court may seem just and equitable.

JNO. W. PRESTON,
U. S. Attorney.
CASPER A. ORNBAUM,
Asst. U. S. Attorney. [18]

United States of America,
Northern District of California,
City and County of San Francisco,—ss

Charles D. Mayer, being first duly sworn, deposes and says: That he is a Chinese and Immigrant Inspector connected with the Immigration Service for the Port of San Francisco, and has been specially directed to appear for and represent the respondent, Edward White, Commissioner of Immigration, in the within entitled matter; that he is familiar with all of the facts set forth in the within Return to Petition for Writ of Habeas Corpus and knows the contents thereof; that it is impossible for the said Edward White to appear in person or to give his attention to said matter; that of affiaint's own knowledge the matters set forth in the Return to the Petition for Writ of Habeas Corpus are true, excepting those matters which are stated on information and belief, and that as to those matters, he believes it to be true.

CHARLES D. MAYER.

Subscribed and sworn to before me this 18th day of December, A. D., 1915.

[Seal]

T. L. BALDWIN,
Deputy Clerk U. S. District Court Northern District
of California. [19]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,933.

In the Matter of the Application for a Writ of
Habeas Corpus in Behalf of TOM YUEN.

**Stipulation (That Testimony, Exhibits, etc., May be
Considered Part of the Return).**

It is hereby stipulated and agreed by and between
the attorneys for the respective parties in the
above-entitled matter that the testimony, evidence,
exhibits and record referred to herein may be con-
sidered, and the same are a part of this Return with-
out being attached thereto.

JNO. W. PRESTON,

U. S. Attorney.

CASPER A. ORNBAUM,

Asst. U. S. Attorney.

JOHN L. McNAB,

TIMOTHY HEALY,

Attys. for Petitioner.

[Endorsed]: Filed Dec. 18, 1915. W. B. Mal-
ling, Clerk. By Lyle S. Morris, Deputy. [20]

[Order Discharging Petitioner from Custody.]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

JOHN L. McNAB, Esq., and TIMOTHY
HEALY, Esq., Attorneys for Petitioner.

JOHN W. PRESTON, Esq., United States At-
torney and CASPER A. ORNBAUM, Esq.,
Assistant United States Attorney, Attor-
neys for Respondent.

(ORDER THE PETITIONER BE DIS-
CHARGED.)

Upon the overruling of the demurrer to the petition herein, a writ of habeas corpus was issued to which a return has been filed. No new matter is thereby presented, and therefore, for the reasons given upon the overruling of the demurrer, it is ordered that the petitioner be discharged from custody.

December 20th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Dec. 20, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [21]

[Order Discharging Petitioner from Custody.]

*In the District Court of the United States, Northern
District of California.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

(ORDER OF DISCHARGE.)

This matter having been regularly brought on for hearing upon the issues joined herein, and the same having been duly heard and submitted, and due consideration having been thereon had, it is by the Court now here ordered, that the said named person in whose behalf the Writ of Habeas Corpus was sued out, is illegally restrained of his liberty, as alleged in the petition herein, and that he be, and he is hereby discharged from the custody from which he has been produced, and that he go hence without day.

Entered this 20th day of December, 1915.

[Seal]

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

[Endorsed]: Filed Dec. 20, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [22]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

Petition for Appeal.

To the Honorable M. T. DOOLING, Judge of the
District Court of the United States, for the
Northern District of California:

Edward White, as Commissioner of Immigration at the Port of San Francisco, appellant herein, feeling aggrieved by the Order and Judgment made and entered in the above-entitled cause on the 20th day of December, A. D. 1915, discharging Tom Yuen from the custody of said appellant, does hereby appeal from said Order and Judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors filed therewith.

WHEREFORE, petitioner prays that his appeal be allowed and that citation be issued, as provided by law, and that a transcript of the record, proceedings, and documents, and all of the papers upon which said Order and Judgment were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such Court, and in accordance with the law in such case made and provided. [23]

Dated this 14th day of March, A. D. 1916.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUM,

Asst. United States Attorney.

Service of the within Petition for Appeal by copy admitted this —— day of March, 1916.

JOHN L. McNAB,

TIMOTHY HEALY,

Attorneys for Appellee.

[Endorsed]: Filed Mar. 15, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [24]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

Assignment of Errors.

Now comes Edward White, Commissioner of Immigration at the Port of San Francisco, respondent in the above-entitled cause, and appellant in the appeal to the United States Circuit Court of Appeals, taken herein, by his attorneys, John W. Preston, United States Attorney, and Casper A. Ornbaum, Assistant United States Attorney, and files the following Assignment of Errors upon which he will rely in the prosecution of his appeal in the above-entitled cause, to the United States Circuit Court of Appeals for the Ninth Circuit, from the Order and Judgment made by this Honorable Court on the 20th

day of December, A. D. 1915.

I.

That the Court erred in granting the Writ of Habeas Corpus and discharging the alien, Tom Yuen, from the custody of Edward White, the said Commissioner of Immigration;

II.

That the said Court erred in holding that it had jurisdiction to issue the Writ of Habeas Corpus in the above-entitled cause, as prayed for in the petition of the said Tom Yuen for a Writ of Habeas Corpus.

III.

That the Court erred in holding that the allegations [25] contained in said petition for a Writ of Habeas Corpus were sufficient in law to justify the granting and issuing of a Writ of Habeas Corpus.

IV.

That the Court erred in finding that the evidence upon which the Secretary of Labor issued the warrant in deportation for the said Tom Yuen was insufficient in character.

V.

That the Court erred in holding that the entry of Tom Yuen into the United States from Mexico within three years could not be established by *ex parte* statement of a witness whose only means of identification of the said Tom Yuen was by a photograph shown to him by the Immigration Officers.

VI.

That the Court erred in holding that the said Tom Yuen was illegally restrained of his liberty by Edward White, Commissioner of Immigration, and that

the evidence taken in the hearing of this case, under the Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913, and the Chinese Exclusion Laws, was insufficient to justify the said respondent, as Commissioner of Immigration, to detain or deport the said Tom Yuen.

VII.

That the Court erred in discharging the said alien, Tom Yuen, from the custody of the said Edward White, Commissioner of Immigration, at the Port of San Francisco, and appellant herein.

WHEREFORE, appellant prays that the said Order and Judgment of the United States District Court, in and for the Northern District of California, made and entered herein, in the office of the clerk of the said court, on the 20th day of December, A. D. 1915, setting aside the Return to the Petition for a Writ of [26] Habeas Corpus, and discharging the said Tom Yuen from the custody of Edward White, Commissioner of Immigration, and appellant herein, be reversed and that the said Tom Yuen be remanded to the custody of the said Commissioner of Immigration.

Dated this 14th day of March, A. D. 1916.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUM,

Asst. United States Attorney.

Service of the within Assignment of Errors by copy admitted this — day of March, 1916.

JOHN L. McNAB,
TIMOTHY HEALY,
Attorneys for Appellee.

[Endorsed]: Filed Mar. 15, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [27]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

Order Allowing Appeal.

On motion of John W. Preston, United States Attorney, and Casper A. Ornbaum, Assistant United States Attorney, attorneys for petitioner in the above-entitled cause.

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an Order and Judgment heretofore made and entered herein, be, and the same is hereby allowed, and that a certified transcript of the records, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, in the manner and time prescribed by law.

M. T. DOOLING,
Judge of the District Court.

Dated this 14th day of March, A. D. 1916.

Service of the within Order Allowing Appeal by copy admitted this — day of March 1916.

JOHN L. McNAB,
TIMOTHY HEALY,
Attorneys for Appellee.

[Endorsed]: Filed Mar. 15, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [28]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of TOM YUEN, on Habeas Corpus.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to Tom Yuen and John L. McNab & Timothy Healy, Esqs., his Attorneys.

You and each of you will please take notice that Edward White, Commissioner of Immigration at the Port of San Francisco, appellant herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from an Order and Judgment made and entered herein on the 20th day of December, A. D. 1915, setting aside the Return to the Petition for a Writ of Habeas Corpus, and discharging the said Tom Yuen from the custody of the said Edward White, Commissioner of Immigration at the Port of San Francisco, and appellant herein.

Dated this 14th day of March, A. D. 1916.

JNO. W. PRESTON,
United States Attorney.
CASPER A. ORNBAUM,
Asst. U. S. Attorney.

Service of the within Notice of Appeal by copy admitted this —— day of March, 1916.

JOHN L. McNAB,
TIMOTHY HEALY,
Attorneys for Appellee.

[Endorsed]: Filed Mar. 15, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [29]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of the Application for a Writ of
Habeas Corpus in Behalf of TOM YUEN.

**Stipulation (Relative to Respondent's Exhibit
"A").**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties in the
above-entitled cause that the original record of the
Bureau of Immigration, which was filed in the above-
entitled court as Respondent's Exhibit "A," and
which was made a part of Respondent's Return to the
Petition for a Writ of Habeas Corpus in said cause,
may be transferred, in its said original form and
without being transcribed, to the United States Cir-

cuit Court of Appeals for the Ninth Circuit, and the same is and may there be considered as a part of Respondent's Return to the said Petition for Writ of Habeas Corpus, and the record in determining this cause on appeal to the said United States Circuit Court of Appeals for the Ninth Circuit, without objection on the part of either of the said respective parties.

May 22, 1916.

JNO. W. PRESTON,
United States Attorney.
CASPER A. ORNBAUM,
Assistant U. S. Attorney.
Attorneys for Appellants.
JOHN L. McNAB,
TIMOTHY HEALY,
Attorneys for Respondent. [30]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,933.

In the Matter of the Application for a Writ of Habeas Corpus in Behalf of TOM YUEN.

Order (Relative to Respondent's Exhibit "A").

It appearing to the Court that it is both necessary and proper that the original papers referred to in the above stipulation should be inspected in the United States Circuit Court of Appeals for the Ninth Circuit, in determining the appeal of said cause, the same having been made and considered a part of the

respondent's Return to the Petition for a Writ of Habeas Corpus.

IT IS THEREFORE ORDERED that the said original record be transferred by the clerk of this court to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to be retained by said clerk until the appeal in the above-entitled cause is properly disposed of, at which time the said original papers are to be returned to the clerk of the above-entitled court.

March 23, 1916.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 23, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [31]

**Certificate of Clerk, U. S. District Court, to
Transcript on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing 32 pages, numbered from 1 to 32, inclusive with the accompanying exhibit (transmitted separately in its original form), contain a full, true, and correct transcript of certain records and proceedings as the same now remain on file and of record in the office of the clerk of said District Court, in the matter of Tom Yuen, on Habeas Corpus, No. 15,933; which said Transcript on Appeal is made up pursuant to and in accordance with "Praecipe" (copy of which is embodied in this Transcript) and the in-

structions of attorneys for appellants herein.

Annexed hereto is the original Citation on Appeal issued herein (page 33).

IN WITNESS WHEREOF I have hereunto set my hand and the seal of said District Court this 12th day of April, A. D. 1916.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath.

CMT.

Deputy Clerk. [32]

(Citation on Appeal.)

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Tom Yuen and John L. McNab & Timothy Healy, Esqs., His Attorneys, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, First Division wherein Tom Yuen is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING,
United States District Judge for the Northern Dis-
trict of California this 14th day of March, A. D. 1916.

M. T. DOOLING,
United States District Judge. [33]

[Endorsed]: No. 15,933. United States District
Court for the ——— District of ———. Edward
White, etc., Appellant, vs. Tom Yuen. Citation on
Appeal. Filed Mar. 15. 1916. W. B. Maling, Clerk.
By C. W. Calbreath, Deputy Clerk.

[Endorsed] No. 2776. United States Circuit
Court of Appeals for the Ninth Circuit. Edward
White, as Commissioner of Immigration at the Port
of San Francisco, Appellant, vs. Tom Yuen, Ap-
pellee. Transcript of Record. Upon Appeal from
the United States District Court for the Northern
District of California, First Division.

Filed April 12, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.